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MEMORANDUM

TO: City Council, City of Louisville

FROM: Nicolas D. Cotton-Baez /s/

DATE: November 12, 2020

RE: Railroad Quiet Zone Project Status Update

This memorandum is to provide an update on the status of the City's Railroad Quiet Zone Project. This memorandum or any of the information herein may be shared with members of the public.

Background

In 2017, the City was awarded a Surface Transportation Improvement Program Grant for the design and construction of a quiet zone area along the BNSF rail line from Baseline Road in Lafayette to Pine Street in Louisville. Federal regulation ordinarily requires that train horns begin sounding 15–20 seconds before entering public highway-rail grade crossings, no more than one quarter mile in advance. However, local governmental entities responsible for traffic control or law enforcement at railroad crossings are permitted to create “quiet zones”; i.e., a section of a rail line at least one-half mile in length that contains one or more consecutive public highway-rail grade crossings at which train horns are not routinely sounded when trains are approaching the crossings.

Because the absence of routine horn sounding increases the risk of a crossing collision, local governments desiring to establish a quiet zone are required to mitigate this additional risk by installing active warning devices—such as flashing lights, gates, constant warning time devices, and power out indicators—at each public highway-rail crossing within a quiet zone.

The City is pursuing a quiet zone to include five highway rail crossings, four of which—the crossings at Pine Street, Griffith Street, Dillon Road, and South Boulder Road—are in Louisville, and one of which—the crossing at Baseline Road—is in Lafayette. After the improvements are constructed, according to federal law, train horns will no longer be required to be sounded at the crossings forming the quiet zone, but may be sounded if a locomotive engineer observes a safety obstruction or hazard on the tracks.

The establishment of a quiet zone requires construction of improvements at a highway-rail crossing, and thus requires application to the Colorado Public Utilities Commission (“PUC”) and cooperation from the railroad. The City has encountered challenges in both the PUC application process and in receiving cooperation from the railroad.

The following section provides a status update on the City’s Railroad Quiet Zone Project, which includes a discussion of the challenges the City has faced in establishing railroad quiet zones at the highway-rail crossings in Louisville.

Status Update

I. Pine Street

- July 13, 2018: City filed its PUC application for final approval to construct improvements at the crossing.
- August 22, 2018: City’s application granted by the PUC.
- The City and BNSF have come to an agreement regarding the terms of the construction and maintenance agreement.¹
- The parties have been waiting to execute the agreement until after the remaining issues in the South Boulder Road PUC proceeding are resolved.²

II. Griffith Street

- July 26, 2018: City filed its PUC application for final approval to construct improvements at the crossing.
- September 5, 2018: City’s application granted by the PUC.
- The City and BNSF have come to an agreement regarding the terms of the construction and maintenance agreement.³
- The parties have been waiting to execute the agreement until after the remaining issues in the South Boulder Road PUC proceeding are resolved.⁴

III. Dillon Road

- September 17, 2018: City filed its PUC application for preliminary approval⁵ to construct improvements at the crossing.
- October 22, 2018: BNSF passively intervened in the City’s application indicating that it did not oppose or contest the granting of City’s application.

¹ Execution of a grade crossing agreement with BNSF is required prior to construction of the improvements at the crossing.

² Federal law requires construction on all crossings to be completed before designation of the City’s quiet zone.

³ See *supra* footnote 1.

⁴ See *supra* footnote 2.

⁵ The City filed an application for preliminary approval instead of final approval because the City had not yet received final design plans from the railroad. The hope was that the additional review time would result in expedited approval of the City’s application.

- November 8, 2018: The PUC deemed City's application for preliminary approval complete, approved the City's preliminary design plans, and ordered the City to file final design plans.⁶
- July 15, 2019: Despite repeated requests by the City for final design plans, and despite the railroad's representation in its passive intervention that it did not oppose or contest the granting of City's application, the railroad did not provide the City with final design plans until July 15, 2019. The City filed the plans with the PUC on that same day.
- In the meantime, the City was forced to move the PUC for multiple extensions of deadlines for filing of final plans, and to make multiple requests to the PUC for assistance in obtaining final plans from BNSF. BNSF finally provided the City with final plans in compliance with the City's application after administrative law judge ("ALJ") Harris Adams was assigned to, and the PUC's trial staff intervened in, the proceeding.
- July 29, 2019: ALJ Harris Adams issued his Recommended Decision that the PUC approve the City's application.
- August 18, 2019: The PUC granted the City's application and ordered the parties to file a signed construction and maintenance agreement⁷ by September 1, 2019.
- August 30, 2019: BNSF filed a Motion for a 30-day extension to file the signed construction and maintenance agreement.
- September 20, 2019: The PUC granted the 30-day extension on the condition that BNSF would have to file an affidavit explaining what negotiation had been completed and what open issues remained if BNSF could not meet the extended deadline.
- October 25, 2019: BNSF filed a Motion for a second 30-day extension to submit the signed construction and maintenance agreement and an Affidavit of BNSF's Manager of Public Projects in support of the Motion.
- December 11, 2019: The PUC granted BNSF's Motion for a second 30-day extension to file the signed construction and maintenance agreement, and notified BNSF that it would be fined with a civil penalty should BNSF fail to file the signed agreement within the 30-day period.
- December 30, 2019: BNSF filed the construction and maintenance agreement signed by both parties.
- Estimated crossing construction timelines are set forth in Section V, below.

IV. South Boulder Road

- November 16, 2018: City filed its PUC application for final approval to construct improvements at the crossing.
- December 12, 2018: BNSF intervened⁸ in the proceeding, contesting the City's application.
- In its intervention, BNSF cited safety concerns as the basis of its opposition to the City's application.
- The City was surprised by BNSF's intervention in the proceeding because BNSF was given the opportunity⁹ to raise safety concerns with the City's proposed design well in advance of the filing of the City's application and had not done so.

⁶ The railroad is responsible for providing the City with final design plans.

⁷ See *supra* footnote 1.

⁸ As the owner of the tracks intersecting the road, BNSF had the right to intervene in the proceeding pursuant to PUC Rule.

- January 3, 2019: The PUC deemed the City's application complete and referred the application to ALJ Melody Mirbaba for determination on the merits.
- February 13, 2019: The ALJ set an evidentiary hearing in the matter to determine the merits of the City's application in view of BNSF's objections.
- June 13 & 14, 2019: After being continued twice, once for a procedural reason and once due to the unavailability of a BNSF witness, the evidentiary hearing was held on June 13 and 14, 2019.
- June 28, 2019: The parties filed final statements of position (final arguments) regarding the evidence presented at the hearing.
- September 10, 2019: The ALJ issued her Recommended Decision granting the City's application, deeming the City's proposed design safe, and rejecting each of BNSF's objections.
- September 30, 2019: BNSF filed exceptions to the ALJ's Recommended Decision, specifically regarding railroad traffic signal preemption and exit gate system technology.¹⁰
- October 15, 2019: City filed its Response to BNSF's exceptions defending the challenged components of the City's design.
- April 13, 2020: The PUC issued its Decision denying BNSF's exceptions and granting the City's application.
- May 4, 2020: BNSF filed its Application for reconsideration of the PUC's Decision denying BNSF's exceptions and granting the City's application, alleging that aspects of the City's approved design may not be feasible.
- May 19, 2020: City filed its Response to BNSF's Application for reconsideration.
- June 1, 2020: The PUC issued its Decision granting BNSF's Application for reconsideration for the sole purpose of determining whether the City's approved design is infeasible.
- July 17, 2020: City staff met with BNSF staff to attempt to resolve BNSF's remaining objections regarding the City's approved design.¹¹
- August 3, 2020: The City and BNSF entered into and filed with the PUC a Stipulation regarding railroad traffic signal preemption and exit gate technology.¹²

⁹ BNSF personnel were provided information in advance of and attended a field diagnostic review meeting concerning the City's proposed design on July 10, 2017, well in advance of the filing of the City's application on November 16, 2018.

¹⁰ BNSF contested the City's design decision to maintain simultaneous traffic signal preemption and install a timed exit gate system, and offered an alternative design proposing advance traffic signal preemption and a presence detection (radar) exit gate system.

¹¹ The City maintained that it was not technologically impossible, infeasible, or unsafe to maintain simultaneous preemption with a timed exit gate system at the subject crossing, City staff agreed to meet with BNSF in an attempt to expedite the proceeding.

¹² Pursuant to the Stipulation, the parties agreed that:

a. Simultaneous preemption may be maintained at the crossing, and that BNSF withdraws its objection to the City's approved application concerning simultaneous preemption.

b. The parties will work together to amend the City's approved application as necessary and appropriate to modify the crossing design to replace the timed exit gate system with a photo radar exit gate system. BNSF will file with the Commission a revised estimate and schematic diagram reflecting the maintenance of simultaneous preemption and the addition of the photo radar exit gate monitoring system at the subject crossing.

- September 2, 2020: The PUC issued its Decision ordering the parties to make certain filings consistent with revised design and remanding the proceeding, once again, to ALJ Melody Mirbaba.
- September 11, 2020: Consistent with the PUC's September 2, 2020 Decision, the City filed its Unopposed Amendment to Application and BNSF filed its revised crossing schematic diagram and construction cost estimates, each reflecting the revised design agreed upon in the parties' Stipulation.
- October 6, 2020: After being ordered to do so by the ALJ in her September 28, 2020 Decision, the parties filed written testimony in support of the revised design agreed upon in the parties' Stipulation.
- October 19, 2020: The ALJ issued her Recommended Decision approving the parties' Stipulation and granting the City's amended application.
- November 8, 2020: The ALJ's Recommended Decision became the final decision of the PUC by operation of PUC Rule, and the following orders of the Recommended Decision became effective:
 - The parties must file a signed construction and maintenance agreement for the crossing within 60 days;
 - Within 90 days, BNSF must make a filing indicating its calculation of the clearance and total warning times for the subject crossing. If it fails to do so, the City's calculation of clearance and total warning times (1 and 35 seconds, respectively) must be used at the crossing.¹³
 - Construction on the crossing must begin by March 1, 2021, and be completed by September 1, 2021.
- November 28, 2020: The date by which BNSF must file an application for reconsideration of the Recommended Decision that became the final decision of the PUC on November 8, 2020.¹⁴
- Present: The City and BNSF are currently negotiating the construction and maintenance agreement for the highway-rail crossing at South Boulder Road.
- Estimated crossing construction timelines are set forth in Section V, below.

V. Estimated Crossing Construction Timelines:

c. The City will fund the installation of the photo radar exit gate monitoring system, and BNSF will maintain such system once installed pursuant to the Commission's Rules Regulating Railroads, Rail Fixed Guideways, Transportation by Rail, and Rail Crossings.

d. The Stipulation does not constitute an admission on the part of the City that it is technologically impossible, infeasible, or unsafe to maintain simultaneous preemption with a timed exit gate system at the subject crossing.

¹³ BNSF has represented to the PUC that it cannot properly estimate clearance and total warning time until the crossing is surveyed for construction.

¹⁴ BNSF's attorneys had indicated that BNSF was considering filing an exception to the ALJ's order in the Recommended Decision that BNSF file clearance and total warning times by the established deadline. BNSF did not file exceptions. However, BNSF still has the right under PUC Rule to file an application for reconsideration of the order now that it has been adopted by the PUC. The City Attorney's office contacted BNSF's attorneys about BNSF's plans and is waiting to hear back.

- Crossing construction will take place after the signed construction and maintenance agreements for Pine Street, Griffith Street, and South Boulder Road are filed with and approved by the PUC.
- The agreements will need to undergo BNSF's internal approval process, and be approved by the Louisville City Council.
- Following the parties' respective approvals, the parties will then execute the agreement before filing the same (estimated November 2020–January 2021).¹⁵
- Following the execution of the signed construction and maintenance agreements, the City will need to re-bid the portion of the quiet zone project to be constructed by the City (i.e., the roadway improvements involving paving and concrete work).
- City staff estimates the bid process will take one to two months.
- Because the project involves CDOT funding, CDOT may require the City to update its plans and specifications to current standards before the City may put the project out for bid. City staff will work diligently to obtain CDOT's approval, if required.
- Thereafter, the contractor to whom the project is awarded will need to obtain required permits and provide safety qualifications and/or undergo safety training, which City staff estimates will take several weeks to several months. The selected contractor will need to be bonded and insured under BNSF requirements, the timing of which depends on BNSF's and the City's contractor's timelines.
- The City will then need BNSF's approval for work scheduling, track shutdown scheduling, and flaggers within the right-of-way, the timing of which depends on BNSF staff availability and priorities.
- Construction completion will be tied to construction commencement. City staff estimates the construction activities for which the City is responsible (i.e., paving and concrete work) should take 30 to 45 days for all locations (i.e., Pine Street, Griffith Street, Dillon Road, and South Boulder Road), depending on proper sequencing, favorable weather, and coordination with BNSF.
- The hope is that the construction timeline for all locations will closely follow the construction deadlines agreed upon by the parties and recommended by the ALJ in her latest Recommended Decision in the South Boulder Road PUC proceeding; i.e.,
 - o Construction commencement by March 1, 2021; and
 - o Construction completion by September 1, 2021.

If you have questions or would like any additional information regarding the above matters, please contact our office.

cc: Kurt Kowar, Director of Public Works and Utilities
Heather Balser, City Manager

¹⁵ The City anticipates the terms of the construction and maintenance agreements for Pine Street, Griffith Street, and South Boulder Road to be substantially similar to those as have been agreed upon in the fully-executed agreement for Dillon Road, which may lead to a shortened negotiation timeframe.